

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

J. ROSE & ASSOCIATES, INC.,

Plaintiff,

vs.

No. 2:17-cv-00634 RSL

BAKER MILLS, INC., a Utah Corporation;
KODIAK CAKES, LLC, a Delaware Limited
Liability Company.

STIPULATED PROTECTIVE
ORDER

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER-1

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Stipulated Protective Order with ANS redlines (clean).docx 9/19/17
(LF) #28429.005

OSERAN HAHN, P.S.
10900 NE Fourth Street #1430
Bellevue WA 98004
Phone: (425) 455-3900
Facsimile: (425) 455-9201

2. "CONFIDENTIAL" MATERIAL

"Confidential" material includes but is not limited to the following documents and tangible things produced or otherwise exchanged: confidential business or personal information written or stored in any medium whatsoever, including but not limited to corporate financial records, sensitive business plans and communications, employee information, customer or account information (including data, proposals, bids, or personal information related to a customer), trade secrets, intellectual property (e.g., proprietary technical information), documents related to contracts and/or relationships with third parties where such relationships or the terms of such contracts are confidential or competitively sensitive, sensitive business documents which disclose the competitive practices or strategies of the company, and non-public financial information.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries or compilations of confidential material; and (3) any testimony, conversations or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material

1 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
2 that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the designating party, a receiving party may disclose any
5 confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors and employees (including in house counsel) of the receiving
9 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a
10 particular document or material produced is for Attorney's Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably necessary for this
12 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication of
15 confidential material, provided that counsel for the party retaining the copy or imaging service
16 instructs the service not to disclose any confidential material to third parties and to immediately
17 return all originals and copies of any confidential material;

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
19 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
20 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal confidential material must be separately
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1 bound by the court reporter and may not be disclosed to anyone except as permitted under this
2 agreement; and

3 (g) the author or recipient of a document containing the information or a custodian or
4 other person who otherwise possessed or knew the information.

5 4.3 "ATTORNEY'S EYES ONLY" Confidential Information. The Parties agree that
6 certain Confidential Information necessary to complete discovery in this matter may require
7 further protection than is provided in the paragraphs above. This further protection may be
8 warranted as a result of the information's competitive value in the current marketplace; the
9 irreversible damage to one or more parties should the information be disclosed; and/or the potential
10 to seriously and irreversibly disrupt current business and/or employee relations. This Confidential
11 Information may be designated "Attorneys' Eyes Only." Confidential Information designated
12 "Attorneys' Eyes Only" shall be restricted solely to: (1) outside counsel for the Parties and their
13 employees necessarily involved in the conduct of this litigation; (2) experts and consultants
14 retained by any of the Parties who have a need for such information to assist in this litigation; (3)
15 any person who is familiar with such information from some context other than the litigation itself;
16 and (4) the court, jury, court personnel, court reporters and similar personnel. Whenever
17 information designated as "Attorneys' Eyes Only" pursuant to this Protective Order is to be
18 discussed by a party or disclosed in a deposition, hearing or pre-trial proceeding, the designating
19 party may exclude from the room any person, other than the persons designated as appropriate, for
20 that portion of the deposition, hearing or pre-trial proceeding.

21 4.4 Filing Confidential Material. Before filing any confidential material or discussing
22 or referencing such material in court filings, the filing party shall confer with the designating party

1 to determine whether the designating party will remove the confidential designation, whether the
2 document can be redacted, or whether a motion to seal or stipulation and proposed order is
3 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
4 that will be applied when a party seeks permission from the court to file material under seal.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Production.** Each party
7 or non-party that designates information or items for protection under this agreement must take
8 care to limit any such designation to specific material that qualifies under the appropriate
9 standards. The designating party must designate for protection only those parts of material,
10 documents, or oral or written communications that qualify, so that other portion of the material,
11 documents, items or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
16 and burdens on other parties) expose the designating party to sanctions.

17 If it comes to a designating party's attention that information or items that it designated for
18 protection do not qualify for protection, the designating party must promptly notify all other parties
19 that it is withdrawing the mistake designation.


20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
21 agreement (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or
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STIPULATED PROTECTIVE ORDER-5

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1 ordered, disclosure or discovery material that qualifies for protection under this agreement must
2 be clearly so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
5 the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"
6 to each page that contains confidential material. If only a portion or portions of the material on a
7 page qualifies for protection, the producing party also must clearly identify the protected portion(s)
8 (e.g., by making appropriate markings in the margins). 

9 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
10 must identify on the record, during the deposition, hearing or other proceeding, all protected
11 testimony, without prejudice to their right to so designate other testimony after reviewing the
12 transcript. Any party or non-party may, within fifteen (15) days after receiving a deposition
13 transcript, designate portions of the transcript, or exhibits thereto, as confidential.

14 (c) Other tangible items: the producing party must affix in a prominent place on the
15 exterior of the container or containers in which the information or item is stored the word
16 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." If only a portion or portions of the
17 information or item warrant protection, the producing party, to the extent practicable, shall identify
18 the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the designating party's
21 right to secure protection under this agreement for such material. Upon timely correction of a
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1 designation, the receiving party must make reasonable efforts to ensure that the material is treated
2 in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion or in
13 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
14 with other affected parties in an effort to resolve the dispute without court action. The certification
15 must list the date, manner and participants to the conference. A good faith effort to confer requires
16 a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under Local
19 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
21 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
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1 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
2 the material in question as confidential until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
7 must:

8 (a) promptly notify the designating party in writing and include a copy of the subpoena
9 or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in
11 the other litigation that some or all of the material covered by the subpoena or order is subject to
12 this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, but inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
19 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
22 Bound" that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order or
7 agreement that provides for production without prior privilege review. Parties shall confer on an
8 appropriate non-waiver order under Fed. R. Evid. 502.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within sixty (60) days after the termination of this action, including all appeals, each
11 receiving party must return all confidential material to the producing party, including all copies,
12 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
13 destruction.

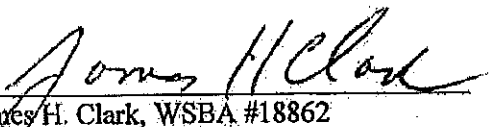
14 Notwithstanding this provision, counsel are entitled to retain one (1) archival copy of all
15 documents filed with the court, trial, deposition and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
17 product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

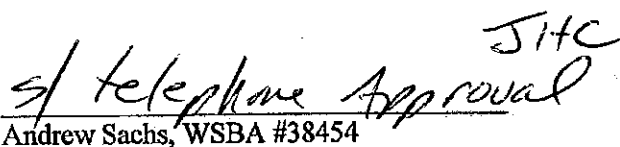
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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22

1 DATED: September 19, 2017.

2 OSERAN HAHN, P.S.

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4 
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED this 29th day of September, 2017.



The Honorable Robert S. Lasnik
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on _____
[date] in the case of *J. ROSE & ASSOCIATES, INC. v. BAKER MILLS INC., a Utah Corporation;*
KODIAK CAKES, LLC, a Limited Liability Company, Civil Action No. 2:17-cv-00634 RSL. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____